



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Ms. Sara Abbott McEown
Counsel for the Fort Worth Transportation Authority
Jackson Walker, L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202

OR2013-21924

Dear Ms. McEown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508687.

The Fort Worth Transportation Authority (the "authority"), which you represent, received a request for the authority's procurement policy and the evaluation scores for a specified request for proposals.¹ You state the authority has released the procurement policy to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted information consists of the authority's evaluation scores of the technical portions of proposals submitted to the authority in connection with a request for proposals to secure bids for a design-build contractor for a specified project. You inform us the request for proposals at issue was subsequently cancelled. You explain the authority intends to issue a new request for proposals for a design-build contractor for the specified project and award a contract pursuant to the new request for proposals. You state the authority anticipates the same companies will submit proposals for the new request for proposals, and release of the evaluation scores could undermine the new procurement process. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Accordingly, the authority may withhold the submitted information under section 552.104 of the Government Code.³ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As our ruling is dispositive, we need not address the remaining submitted arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi L. Wilkins". The signature is fluid and cursive, with the first name "Kristi" and last name "Wilkins" clearly distinguishable.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 508687

Enc. Submitted documents

c: Requestor
(w/o enclosures)